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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/828,716

08/30/2004

Brian C. Case

1000-130

4764

42715

7590

12/31/2008

BUCHANAN INTELLECTUAL PROPERTY OFFICE LLC

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EXAMINER

STEWART, ALVIN J

ART UNIT

PAPER NUMBER

3774

MAIL DATE

DELIVERY MODE

12/31/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/828,716	<b>Applicant(s)</b> CASE ET AL.	
	<b>Examiner</b> Alvin J. Stewart	<b>Art Unit</b> 3774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 22 and 30-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22 and 30-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Response to Arguments***

Applicant's arguments with respect to claims 22 and 30-32 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 22 and 30-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Osborne et al US Patent 7,128,759 B2.

Osborne et al discloses an artificial heart valve comprising a valve structure having a plurality of leaflets (14 & 16), the leaflets having proximal and distal portions, an inner edge traversing the passage, a first and second lateral edges. The edges include an attachment pathway, the pathway extends along the first and the second edges, each of the first and second lateral edges include a proximal attachment pathway portion. Additionally, the Osorne reference discloses pockets (18) for the purpose of helping the leaflets to close (see Figures 1-4; col. 6, lines 28-67 and col. 7, lines 1-39).

Additionally, Osborne et al discloses a support structure (12) comprising a series of proximal bends comprising commissural points and longitudinal attachment struts extending distally therefrom, the support structure further comprising a pair of distal attachments struts extending distally and circumferentially from the longitudinal attachment struts. The lateral outer edges are attached proximally along the longitudinal attachment struts to form a extensive

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leaflet contact area and distally long the distal attachment struts which converge laterally and carry the bottom edge of each of the plurality of leaflets such that the prosthesis.

Finally the coapable area of each leaflet is between 10 to 80 percent.

Claims 22 and 30-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Pavenik et al US Patent 7, 452,371 B2.

Pavenik et al discloses an artificial heart valve comprising a valve structure having a plurality of leaflets (78 & 79), the leaflets having proximal and distal portions, an inner edge traversing the passage, a first and second lateral edges. The edges include an attachment pathway, the pathway extends along the first and the second edges, each of the first and second lateral edges include a proximal attachment pathway portion. Additionally, the Osnorne reference discloses pockets (between 81 and 80) for the purpose of helping the leaflets to close (see Fig. 27; col. 11, lines 17-21; col. 11, lines 45-48; and col. 12, lines 3-62).

Additionally, Pavenik et al discloses a support structure (11 & 13) comprising a series of proximal bends comprising commissural points and longitudinal attachment struts extending distally therefrom, the support structure further comprising a pair of distal attachments struts extending distally and circumferentially from the longitudinal attachment struts. The lateral outer edges are attached proximally along the longitudinal attachment struts to form a extensive leaflet contact area and distally long the distal attachment struts which converge laterally and carry the bottom edge of each of the plurality of leaflets such that the prosthesis.

Finally the coapable area of each leaflet is between 10 to 80 percent.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin J. Stewart whose telephone number is 571-272-4760. The examiner can normally be reached on Monday-Friday 7:00AM-5:30PM(1 Friday B-week off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Isabella can be reached on 571-272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alvin J Stewart/  
Primary Examiner, Art Unit 3774

December 30, 2008.